

August 7, 2009

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

**SUBJECT:** Department of Development and Environmental Services File No. **E0701117**

**JAMES DOW**  
Code Enforcement Appeal

**Location:** 11729—766th Avenue NE

**Appellant:** **James Dow**  
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Seattle, Washington 98103  
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**King County:** Department of Development and Environmental Services (DDES)  
*represented by* **Jeri Breazeal**  
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**SUMMARY OF RECOMMENDATIONS/DECISION:**

Department's Preliminary Recommendation:	Deny appeal, with revised compliance schedule
Department's Final Recommendation:	Deny appeal, with revised compliance schedule
Examiner's Decision:	Deny appeal, with revised compliance schedule

**EXAMINER PROCEEDINGS:**

Hearing opened:	May 5, 2009
Hearing closed:	May 5, 2009

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.  
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. This matter involves the appeal of a code enforcement Notice and Order. It arises from single-family residential construction on the subject property at 11729 766th Avenue NE east of Skykomish. Well prior to the issuance of a building permit for the construction, the Department of Development and Environmental Services (DDES) informed Appellant James Dow by correspondence dated April 12, 2004 that the structure would be required to have fire suppression sprinklering. The building permit was issued September 29, 2004, under permit no. B04L0717.
2. The permit matter was referred to code enforcement by the DDES Building Inspection Section on October 30, 2007, after the building permit had expired on September 29, 2007. The permit had expired without gaining final inspection approval and DDES also noted the failure to obtain a required sprinkler permit. Inspection revealed the occupancy of the structure with no installed sprinkler system.
3. After the referral, the building permit was extended for an additional year, to September 29, 2008, but expired once more without final approval.
4. On November 28, 2008 DDES issued a code enforcement Notice and Order to Mr. Dow, finding the following violation of county code:
  - A. Use and occupancy of a structure (residence) without final inspections and approvals related to building permit (B04[L]0717) and failure to obtain the required fire suppression permit and/or install the fire suppression system prior to occupancy.

The Notice and Order required vacating the residence and securing it from entry by December 1, 2008, and keeping it vacant until approval for occupancy. The Notice and Order also required that the building permit be re-extended, that the required sprinkler permit be applied for and that sprinkler system installation and final inspection be performed within 150 days from the date of sprinkler permit approval.

5. Mr. Dow filed an appeal of the Notice and Order, making the following claims:
  - A. The DDES building inspector authorized enclosure of the framing on April 21, 2005 “without the installation of a sprinkler system and determined that the structure as built complied with the King County Code and that the installation of a sprinkler system was not required.”
  - B. “DDES is *estopped* from changing its position to the detriment of the Appellant. The decision of the building inspector is binding on DDES.”
  - C. “The Appellant has complied with the alternative standard for code compliance set by the building inspector.”
6. The DDES building inspection record card shows footing inspection approval as of November 10, 2004 and an “OK to enclose framing” approval on April 21, 2005.

7. However, also on April 21, 2005, DDES issued a correction notice at the framing inspection, noting that “sprinklering required by final [inspection].”
8. Nine days earlier, on April 12, 2005, DDES had corresponded with the Appellant reiterating the sprinkler requirement.
9. The Appellant is still desirous of a waiver of the sprinklering requirement. The DDES fire marshal corresponded with the Appellant on November 20, 2007, stating the lack of options to the sprinkler requirement. Such indication was reiterated on March 17, 2009 (after the February 3, 2009 pre-hearing conference in this matter), when it was again stated that the sprinklering requirement was in effect.
10. At hearing, Mr. Dow expressed his frustration that the sprinklering requirement was in place, and expressed his lack of knowledge as to whether he had any rights of review. He still contests the presence of wetlands adjacent to his driveway (which wetlands presence apparently restricts the expansion and/or relocation of the driveway as an enhanced access alternative to the sprinklering requirement).
11. DDES noted at hearing that the sprinklering requirement had been decided prior to the issuance of the building permit for the structure in 2004.

#### CONCLUSIONS:

1. The Appellant’s *estoppel* claim cannot be entertained by the Examiner. The Examiner is without jurisdiction to consider matters of equity in the law, such as the asserted *estoppel*. They must instead be taken to a court of general jurisdiction, the Superior Court. The Examiner is generally limited to applying law duly enacted by statute, ordinance and rule, and as established by case law precedent, and has no authority to adjudicate common law issues such as claims in equity. Equity claims would instead have to be brought in a court of general jurisdiction, the Superior Court. [*Chaussee v. Snohomish County*, 38 Wn.App. 630; 689 P.2d 1084 (1984)]
2. Contrary to the Appellant’s assertion, DDES did not by its framing enclosure approval tacitly or implicitly (and certainly not expressly) waive the sprinklering requirement. At the very least, that implication is belied by the county’s same-day correction notice that reiterated the sprinklering requirement.
3. The Hearing Examiner does not have subject matter jurisdiction over the sprinklering requirement itself. The issue is not before the Examiner in this proceeding and cannot be adjudicated by the Examiner. In considering this Notice and Order appeal, the Examiner must accept the requirement as a given. It appears that the Appellant did not avail himself of opportunities to seek review or appeal of that issue, or otherwise to seek relief, but regardless, it is not a matter that weighs into the consideration of the validity of the Notice and Order. (That is not to say that the Appellant is not free to continue to pursue, or to initiate pursuit of, relief from the requirement; from the record before the Examiner it appears on the surface that the avenues have been exhausted, but as noted that is not a matter for the Examiner to determine in this proceeding.)
4. As the subject building permit has expired without final inspection approval as required by code, the charge to that effect in the Notice and Order is correct. In addition, the charge that the sprinklering system permit has not been obtained and system installed as required is also correct.

5. The Notice and Order shall therefore be sustained and the appeal denied, except that the compliance schedule shall be revised as set forth below to account for the time taken up on appeal.

DECISION:

The appeal is **DENIED**, and the Notice and Order sustained, with the exception that the **COMPLIANCE SCHEDULE** for correction is **REVISED** as set forth in the order below.

ORDER:

1. The structure shall be vacated of any human occupancy and secured from entry *by no later than **August 17, 2009***. The structure shall be maintained as vacant until formally approved by DDES for occupancy.
2. *By no later than **September 8, 2009***, building permit B04L0717 shall be formally requested by the Appellant to be extended by DDES. Such extension request **shall** be accompanied by a **complete** application for the required sprinkler permit.
3. *By no later than **150 days from the date of sprinkler permit approval***, the required sprinkler system shall have been installed and final building permit inspection approval obtained.
4. DDES is authorized to grant deadline extensions for any of the above requirements if warranted, in DDES's sole judgment, by circumstances beyond the Appellant's diligent effort and control. DDES is also authorized to grant extensions for seasonal reasons (potential for erosion, other environmental damage control concerns, etc.).
5. No fines or penalties shall be assessed by DDES against Mr. Dow and/or the property if the above compliance requirements and deadlines are complied with in full (noting the possibility of deadline extension pursuant to the above allowances). However, if the above compliance requirements and deadlines are not complied with in full, DDES may impose penalties as authorized by county code retroactive to the date of this decision.

ORDERED August 7, 2009.

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Peter T. Donahue  
King County Hearing Examiner

**NOTICE OF RIGHT TO APPEAL**

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding Code Enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly

commenced in Superior Court within 21 days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE MAY 5, 2009, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT  
AND ENVIRONMENTAL SERVICES FILE NO. E0701117

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Jeri Breazeal representing the Department and James Dow the Appellant.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	Department of Development and Environmental Services (DDES) staff report to the Hearing Examiner for E0701117
Exhibit No. 2	Copy of the Notice & Order issued October 28, 2008
Exhibit No. 3	Copy of the Notice and Statement of Appeal received November 13, 2008
Exhibit No. 4	Copies of codes cited in the Notice & Order
Exhibit No. 5	Copies of permit documents
Exhibit No. 6	Copies of emails pertaining to permit requirements
Exhibit No. 7	Layout of building with photographs from assessor's records

PTD :vsm  
E0701117 RPT